

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION**

**ELIZABETH MARCOTTE**

**PLAINTIFF**

**VS.**

**NO. 4:06CV000658**

**UNITED PARCEL SERVICE, INC. and  
JOHN DOE MAINTENANCE COMPANY**

**DEFENDANTS**

**ORDER**

Pending is Plaintiff's motion in limine to allow the introduction of the value of medical services provided to Plaintiff. (Docket # 47). Defendant has responded.

Plaintiff argues that the Civil Justice Reform Act of 2003 is unconstitutional in that it violates Article V, section 32 of the Arkansas Constitution and Amendment 80 to the Arkansas Constitution because the statute infringes on the Plaintiff's right to complete compensation for personal injury and infringes on the powers of the Arkansas Supreme Court to set rules of civil procedure. Specifically, Plaintiff claims that Ark. Code Ann. §16-55-212 changed the collateral-source rule.

The Court has located one case in which the Arkansas Supreme Court has been presented with this argument, however, the Court found the issue moot and declined to issue an advisory opinion. *Shipp v. Franklin*, 2007 WL 1713271 (Ark. 2007). In *Shipp*, the Court set forth the standard for reviewing the constitutionality of a statute:

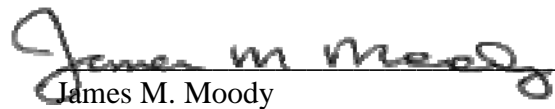
It is well-settled that there is a presumption of validity attending every consideration of a statute's constitutionality; every act carries a strong presumption of constitutionality, and before an act will be held unconstitutional, the incompatibility between it and the constitution must be clear. *Summerville v. Thrower*, --- Ark. ---, --- S.W.3d --- (Mar. 15, 2007). Any doubt as to the constitutionality of a statute must be resolved in favor of its constitutionality. *Id.* The heavy burden of demonstrating the unconstitutionality is upon the one attacking

it. *Id.* If possible, we will construe a statute so that it is constitutional. *Summerville v. Thrower, supra.*

*Shipp v. Franklin*, (Ark.,2007)

In light of this heavy burden and the strong presumption of statute's constitutionality the Court declines to find the statute unconstitutional.

IT IS SO ORDERED this 20<sup>th</sup> day of July, 2007.

  
James M. Moody  
United States District Judge